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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

DOLORES MARIA CAMARENA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Federal Regulatory Scheme prohibiting "structuring" of bank deposits encompassed within 31 U.S.C. §§ 5324 and 5322 requires as an element of that offense that the Government prove a willful violation by the Defendant of that law.

Whether the Federal Regulatory Scheme prohibiting "structuring" of bank deposits encompassed within 31 U.S.C. §§ 5324 and 5322 requires that a jury be instructed that the Government must prove that a Defendant had knowledge of the law prohibiting "structuring" of bank deposits and willfully violated that law.

Whether failure of the Government to prove that this Petitioner willfully violated the law prohibiting "structuring" requires a judgment of acquittal be entered in this case.

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PETITION FOR WRIT OF CERTIORARI

DOLORES MARIA CAMARENA, Petitioner herein, by and through her attorneys of record, JOSEPH (SIB) ABRAHAM, and CHARLES LOUIS ROBERTS, hereby petitions this Court to grant a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit:

CITATIONS TO OPINIONS BELOW

The denial of rehearing and rehearing en banc by the United States Courts of Appeals for the Fifth Circuit in

U.S. v. Camarena, No. 88-1314 was entered without opinion on January 16, 1989; and this *Order* is reproduced herein as Appendix, App. 10. The *Opinion* of the panel of the United States Court of Appeals for the Fifth Circuit in *United States v. Camarena*, No. 88-1314 was entered as a non-published Slip Opinion on December 6, 1988, and is reproduced herein as Appendix, App. 1. Subsequently upon request of the Government, an *Order* of the United States Court of Appeals for the Fifth Circuit was entered on January 27, 1989 and was published as authorizing publication of this *Opinion*, 863 F.2d 880 (1988). As of the date of the preparation of this *Petition*, the *Opinion* is yet unpublished.

JURISDICTION

The denial or rehearing by the United States Court of Appeals for the Fifth Circuit was entered on January 19, 1989. This Petition is timely filed within sixty (60) days of January 19, 1989, pursuant to Supreme Court Rule 20.01. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Applicable statutes read in pertinent parts as follows:

§ 5324. *Structuring transactions to evade reporting requirement prohibited*

No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction –

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

***

(2) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

31 U.S.C. § 5324

§ 5322. *Criminal Penalties*

(a) A person *willfully* violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than $250,000, or imprisoned not more than five years, or both.

(b) A person *willfully* violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315), while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both. [Emphasis supplied]

31 U.S.C. § 5322

§ 5313. *Reports on domestic coins and currency transactions*

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

(b) The Secretary may designate a domestic financial institution as an agent of the United States Government to receive a report under this section. However, the Secretary may designate a domestic financial institution that is not insured, chartered, examined, or registered as a domestic financial institution only if the institution consents. The Secretary may suspend or revoke a designation for a violation of this subchapter or a regulation under this subchapter (except a violation of section 5315 of this title or a regulation prescribed under section 5315), section 411 of the National Housing Act (12 U.S.C. 1730d), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b).

(c)(1) A person (except a domestic financial institution designated under subsection (b) of this section) required to file a report under this section shall file the report –

(A) with the institution involved in the transaction if the institution was designated;

(B) in the way the Secretary prescribes when the institution was not designated; or

(C) with the Secretary.

(2) The Secretary shall prescribe –

(A) the filing procedure for a domestic financial institution designated under subsection (b) of this section; and

(B) the way the institution shall submit reports filed with it.

31 U.S. § 5313

STATEMENT OF THE CASE

1. Procedural History of the Case:

MARIA DOLORES CAMARENA, Petitioner, was charged by indictment on June 2, 1987, with fifty-eight counts of structuring transactions to evade reporting requirements in violation of 31 U.S.C. § 5324(1)(3) which carries criminal penalties as described in 31 U.S.C. § 5322(b). A jury trial was held April 11-15, 1988, in No. EP-87-CR-133, in the United States District Court for the Western District of Texas, El Paso Division, with the Honorable Harry Lee Hudspeth presiding. Pursuant to a guilty verdict as to all counts, a judgment was entered on May 9, 1988, in which the Petitioner was sentenced to a period of five years imprisonment on all counts, to run concurrently and to be suspended after a period of six months imprisonment after which a period of five years supervised release was to be imposed. The Petitioner was also assessed a committed fine of $250,000 as to the first

count of the indictment (*R 132*). A notice of appeals was filed on May 18, 1988. In an *Opinion* dated December 6, 1988, a panel of the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the trial court, in *United States of America versus Maria Dolores Camarena, Slip Opinion,* No. 88-1314 (see Appendix). The Petitioner then filed a *Petition for Panel Rehearing* and *Suggestion for Rehearing En Banc* with the Court of Appeals on December 29, 1988, which the Court denied on January 19, 1989 (see Appendix).

2. Statement of the Facts:

The first count of the indictment against the Petitioner read:

> That on or about February 18, 1987, in the Western District of Texas, within the jurisdiction of this Court, the Defendant, MARIA DOLORES CAMARENA, for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), did unlawfully, knowingly and willfully structure a currency transaction by depositing an amount of $9900.00, in United States currency, at MBank-Vista Hills, 1790 Lee Trevino Drive, in El Paso, Texas, a domestic financial institution. The Defendant MARIA DOLORES CAMARENA'S conduct in structuring the deposit was part of a pattern of illegal activity involving more than $100,000 in a 12-month period, all in violation of Title 31, United States Code, Sections 5324(1) and (3) and 5322(b).
>
> ***Indictment,* (R II 391)**

The other 57 counts of the indictment are essentially identical to the first. The Government in this case attempted to prove at trial that the Petitioner, a Mexican national residing in the border city of Ciudad Juarez, Mexico, had knowingly, willfully and intentionally structured deposits made to El Paso, Texas, banks in order to avoid the reporting requirements of 31 U.S.C. § 5324(1)(3). Most of the evidence presented by the Government was uncontested. For instance, it was uncontested that the Petitioner had deposited various amounts in two El Paso banks on the various dates, as stated in the *Indictment (R II 391 et seq)*. On the stand, the Petitioner freely admitted intentionally depositing amounts less than $10,000, and also admitted that she had not wanted to complete any reporting forms. Defense counsel at trial did, however, present copious testimony from the Petitioner, her associates, and Government witnesses that the Petitioner had had no knowledge of the recently enacted structuring prohibitions found in 31 U.S.C. § 5324, and that she had never been informed of these prohibitions by bank personnel, the Government, or anyone else. The only evidence the Government introduced in an effort to prove the Petitioner did in fact have knowledge of the currency reporting laws in general and the structuring prohibitions specifically was the testimony of bank personnel who stated that on one or more occasions they had told the Petitioner of the reporting requirements for deposits of $10,000 or more; however, the bank personnel (who were cooperating with the Government) did not tell her anything about the prohibitions against structuring deposits of less than $10,000 for the purpose of avoiding these reporting requirements (*R IV 40-44*). The testimony

of one bank officer during the trial indicated the Petitioner was unaware of the law prohibiting structuring:

> Q. Now, when she gives you the $9900, do you tell her, "Wait a minute, you can't deposit $9900 because then what you're attempting to do is evade the structuring of the bank to file what's called the currency transaction report?
> A. No, I did not.
>
> **(R IV 44)**

Prior to the series of transactions for which she was indicted, the Petitioner had made large transfers of funds, which were public knowledge, from her family's bank accounts to banks in the United States. She testified, however, that these transactions had come to the attention of the Mexican authorities and that she and her family were fearful of the consequences of continuing to make similarly large and noticeable transfers, consequences which the family felt could include the confiscation or expropriation of the family's assets, businesses, and licenses by the Mexican government (*R VI 416-443*). The Petitioner further testified, concerning her banking activities, that she had never been told by bank employees that if she deposited more than $10,000 she would be required to complete a currency transaction report, nor that she could not deposit less than $10,000. These transfers of funds to the United States, the Petitioner testified, were being made during a period of economic crisis in Mexico, a period in which the Mexican currency had lost considerable value against the dollar and in which the family had lost a substantial amount of money when Mexican banks converted dollar accounts into pesos by government order (*R VI 412-415*). Furthermore, the family's earlier transfers of large sums of money to El Paso bank accounts had attracted attention

and had become the object of rumors which considerably inflated the true value of these transfers. The Petitioner had been warned by a prominent friend, Dr. Rodolfo Sanchez-Carrillo, shortly after these transfers had been made that it was being said the family had transferred eight to ten times the amount of money actually involved and that people were speaking "very badly" about the transactions (*R VI 416-421, 438-443*). The Petitioner crossed the international bridge into El Paso to make the cash deposits accompanied by her daughters, who attended school in the city, and she testified she feared being robbed while they were with her; therefore, she preferred to carry smaller amounts of money on these trips (*R VI 423-426*). In addition, the Petitioner admitted to a universal impatience with wasting time completing paper work, which also prompted her to make smaller deposits rather than large ones (*R VI 425-426*). On the basis of this evidence, defense counsel at trial requested a jury instruction which included the requirement that the Government prove the Petitioner had acted with a knowledge of the laws prohibiting structuring and with the specific intent to evade those laws (*R I 62*). This request was denied by the trial court (*R VII 529-530*).

REASONS WHY THE WRIT SHOULD BE GRANTED

I. The Federal Regulatory Scheme prohibiting "structuring" of bank deposits encompassed within 31 U.S.C. §§ 5324, 5322 requires as an element of that offense that the Government prove a willful violation by the Defendant of that law.

II. The Federal Regulatory Scheme prohibiting "structuring" of bank deposits encompassed within 31 U.S.C. §§ 5324, 5322 requires that a jury be instructed that the Government must prove that a Defendant had knowledge of the law prohibiting "structuring" of bank deposits and willfully violated that law.

III. Failure of the Government to prove that this Petitioner willfully violated the law prohibiting "structuring" requires that a judgment of acquittal be entered in this case.

A. IN GENERAL.

Simply put, the Petitioner contends that because of the clear and unambiguous language found in the anti-structuring scheme, 31 U.S.C. §§ 5324, 5322, she was entitled to have the Government demonstrate that she had knowledge of that law as against mere knowledge of the currency reporting statutes in general or of 31 U.S.C. § 5313 which involves the specific requirements of filing currency transaction reports for deposits over $10,000 in currency. The Petitioner asserts that the penal statute's requirement of a "willful" violation of the law actually violated, see 31 U.S.C. § 5322, when added to the actual law which the Petitioner was charged with violating and convicted of violating, 31 U.S.C. 5324, see *Indictment, (R II 391).* Every count of her Indictment charged that the Petitioner "did unlawfully, knowingly, and willfully structure a currency transaction . . . ," *(R II 391).* However, at trial both the prosecution and the trial court applied the obvious *mens rea* requirement found in the

statutory scheme 31 U.S.C. §§ 5324, 5322 and in the *Indictment* to the CTR law, 31 U.S.C. § 5313, and refused to apply it to the anti-structuring statutes, 31 U.S.C. § 5324 and § 5322, which formed the basis of both the Petitioner's indictment and her conviction. The trial judge grasped this issue, acknowledged it, but forbade its submission to the jury:

> MR. HARRIS: Your Honor, the Defendant has filed requested jury instructions. Has the Court made a ruling on granting those instructions?
>
> THE COURT: No. I wanted to see which ones you wanted to urge at this time.
>
> * * *
>
> MR. HARRIS: Your Honor, the Defendant's Requested Jury Instruction Number One follows the Court's proposed charge with the exception of the following addition as an essential element of the offense: Fifth, that the Defendant acted with a knowledge of the laws against structuring or attempting to structure any currency transaction, and with the specific intent to evade those laws.
>
> Defendant requests the Court to instruct the jury that in order for the jury to find the Defendant guilty, the Government must prove beyond a reasonable doubt that the Defendant had knowledge of not only the reporting requirements of 5313(a) but also the structuring prohibition contained in Section 5324.
>
> THE COURT: I think this is basically what we talked about a day or two ago. At the time, you didn't have a case to cite, but you did mention to the Court some proposed regulations that were being issued or had been issued.
>
> MR. HARRIS: Yes, sir.
>
> THE COURT: As authority for that. Well, I have to say that your suggestion or your proposed charge is not far fetched. I think I'll deny your request and not give that particular instruction. If that were the law, why – and maybe it'll turn out to be, if that were the law the Defendant has to have specific knowledge of that, that is, the law against structuring, in

addition to general knowledge of the currency reporting requirements of law, and specific intent to evade those requirements, that would be very, very high standard regarding mental state.

The Courts may in due course interpret this law as having such a standard. Maybe in this case or some other case we'll find that out. Anyway, your first request which basically is that the Court add a fifth element, that request will be denied.

(R VII 529-530)

The Government through its trial prosecutor made the specific argument that even general knowledge of the actual crime charged in the *Indictment*, 31 U.S.C. §§ 5324, 5322 was not required:

That leaves you the jury with only two issues of fact to decide which is, after all, your job as judges of the facts, to decide issues of fact. And those two issues can really be boiled down into one, although I'll treat them separately.

That is, whether the Defendant, when she acted during a three-month period, to make 58 transactions, all at $9900 or so, whether she did so with the intent to evade the reporting requirements of Title 31 U.S. Code, the filing of CTR's for case transactions of more than $10,000.

Now, it's important to keep in mind what the law does not require. The law does not require that the Defendant have known at any time during the course of her conduct, that is, to know that the structuring law, that is, 31 USC 5324, existed. That is not the issue, whether that law existed.

In other words, if she willfully structured cash transactions as she unquestionably did, with the intent to evade the reporting requirements, she's guilty, whether or not she knew 31 USC 5324 or structuring was a law passed by Congress, the United States Congress in 1986 that became effective January 27, 1987.

(R IV 547)

Because of this confusion as to which law the *mens rea* attached to, the usual jury instruction drawn from 1 E. Devitt & C. Blackmar, *Federal Jury Practice and Instructions* § 14.03 (1977) and noted by this Court in *Liparota v. United States*, 471 U.S. 419, 422 at N. 3 (1985) would hardly have sufficed:

> The instruction proffered by petitioner was drawn from 1 E. Devitt & C. Blackmar, Federal Jury Practice and Instructions § 14.03 (1977). The instruction reads in its entirety:
>
> > The crime charged in this case is a serious crime which requires proof of specific intent before the defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Liparota v. United States, 471 U.S. 419, 422 at N. 3 (1985)

Equally insufficient was the actual instruction given in the trial of Petitioner. This instruction was drawn from Fifth Circuit Pattern Jury Instructions, No. 9.1 (1983), and utilized by the Fifth Circuit in affirming Petitioner's conviction, *See United States v. Camarena*, No. 88-1314, *Slip Opinion* at P. 4 N. 2:

> The Fifth Circuit Pattern Jury Instruction, number 9.1, explains that "[t]he word 'willfully' . . . means that the act was committed *voluntarily and purposely* with the specific intent do something the law forbids; that is, with bad purpose to disobey or disregard the law." (Emphasis added).

Slip Opinion at P. 4 N. 2

Because the Court and Government consistently attached the "willful" requirement *to the law not charged*, 31 U.S.C. § 5313, this instruction was less than efficacious in presenting the defense of the Petitioner which was that while she was generally aware of the CTR requirements, she did not know it was a crime to avoid such requirements merely by depositing amounts less than $10,000. In general, the Petitioner argues that the actual language of the penal statutes; the particular form of regulation accomplished by this evading or avoiding reporting laws; and the general principal that our penal laws must necessarily be more than just snares for the unwary require that the issue of whether an accused "willfully" violated the anti-structuring laws, 31 U.S.C. §§ 5324, 5322 be placed squarely before the jury.

B. GENERAL REASONS WHY THE WRIT SHOULD BE GRANTED IN THIS CASE.

The *Camarena* opinion entered by the Fifth Circuit below is the First Circuit decision dealing with the required *mens rea* required in 31 U.S.C. §§ 5324, 5322 prosecutions. Acceding to the Government's representations that this was a case involving well settled law because of earlier 31 U.S.C. § 5313 decisions, the panel of the Fifth Circuit removed this case from the oral argument, set it for summary decision pursuant to the Circuit's local rules; and issued an unpublished memorandum opinion affirming the decision, *United States v. Camarena*, No. 88-1314, *Slip Opinion* at P. 1. Having accomplished this, the Government abruptly changed its position; successfully petitioned the Fifth Circuit to have the *Camarena* decision published, see 863 F.2d 88

(1988); and is now citing this Opinion as significant precedent throughout the land, see Pleadings on file, *U.S. v. Hoyland* (CR 88-787-ER pending in the United States District Court for the Central District of California), *Government's Memorandum of Points and Authorities for Stipulated Facts Trail*, at pp. 11, 11 at N.1 and Exhibit A.

The Petitioner contends that this Court should grant a writ of certiorari in this case because this is a case involving the culpable mental state requirement of a new criminal statute affecting and potentially affecting millions of citizens in this country. In cases such as this, we not only have criminal prosecutions, but actual forfeiture of the deposits which could represent the life savings, or business equity of many Americans. The very nature of this anti-structuring regulation posts a problem because of its particular nature. One can assume that most Americans will seek to avoid forms and regulatory paperwork whenever possible. For instance, we can hypothesize a Federal or State law which would require filing of an income tax return if an individual makes over *X* amount. One can also easily imagine a penal law punishing those who made over *X* amount and who failed to file a return. A problem would come with a law which would make it criminal to intentionally make less than *X* amount because the individual did not want to bother with filling out a return. And the real problem would come with a criminal prosecution which would allow the authorities to successfully prosecute these individuals without showing more than a general willingness to avoid paperwork and without requiring that the Government prove that the defendants had notice that a purposeful limiting of income below *X* amount to avoid filling out a return was prohibited by law. This is the question here. The CTR

regulatory schemes are not money laundering statutes, the regulated deposits could have come from any source legitimate or illegitimate. The source of the funds is simply not an issue with 31 U.S.C. § 5313 or § 5324. Other statutes exist to allow the Government to forfeit proceeds of drugs, proceeds of racketeering, and proceeds of other crimes, and to punish money laundering itself, for example see 18 U.S.C. § 981, 982, 1956, 1957, 1962; 21 U.S.C. 853, 854, 881, etc. Thus the Government is protected and our duty should be to see if we can protect the innocent, unwarned public from the broad reach of this "particular" form of regulation.

The Petitioner would argue that this Court should grant certiorari for the same reasons that it granted certiorari in *Liparota v. United States*, 471 U.S. 419 (1985). In *Liparota*, this Court dealt with the issue of the *mens rea* applicable to the sale of food stamps, 7 U.S.C. § 2024(b)(1). In that case as in our case, a jury instruction was refused in the trial court, a conviction was obtained, the Circuit Court affirmed, and this Court granted certiorari to interpret a statute which had the potential of "criminali[zing] a broad range of apparently innocent conduct," *Liparota*, 471 U.S. at 426. The Petitioner asks this Court to grant certiorari on the same basis in our case.

C. *SPECIFIC REASONS WHY THE WRIT SHOULD BE GRANTED IN THIS CASE.*

1. The requirement of a culpable mental state in regulatory statutes cannot be dispensed with without a clear Congressional intent to do so.

As previously pointed out, the Indictment and the actual statutory language of 31 U.S.C. §§ 5324, 5322

required a *mens rea* element that the defendant "did willingly, knowingly and unlawfully structure a currency transaction, by . . . " *(R II 391)*. The Petitioner would show this Court that such language in a regulatory statute requires that the Government prove a willful knowledge of the law alleged to have been violated.

a. In General

The Court in *Liparota, supra,* has set the ground rules as to *mens rea* and its applicability to regulatory statutes. The Court first stated the rules applicable to penal statutes in general:

> Absent indication of contrary purpose in the language or legislative history of the statute, we believe that § 2024(b)(1) requires a showing that the defendant knew his conduct to be unauthorized by statute or regulations. The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Morrisette v. United States, supra,* 342 U.S. at 250, 72 S.Ct. at 243. Thus, in *United States v. United States Gypsum Co.,* 438 U.S. 422, 438, 98 S.Ct. 2864, 2874, 57 L.Ed.2d 854 (1978), we noted that "[c]ertainly far more than the simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement" and that criminal offenses requiring *no mens rea* have a "generally disfavored status." Similarly, in this case, the failure of Congress explicitly and unambiguously to indicate whether *mens rea* is required does not signal a departure from this background assumption of our criminal law.

This construction is particularly appropriate where, as here, to interpret the statute otherwise would be to

criminalize a broad range of apparently innocent conduct.

Liparota, 471 U.S. at 427.

And in terms of regulatory statutes, this Court declared:

> . . . requiring *mens rea* is in keeping with our longstanding recognition of the principle that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis v. United States,* 401 U.S. 808, 812, 91 S.Ct. 1056, 1059, 28 L.Ed.2d 493 (1971). See also *United States v. United States Gypsum Co., supra,* 438 U.S. at 437, 98 S.Ct., at 3872; *United States v. Bass,* 404 U.S. 336, 347-348, 92 S.Ct. 515, 522-523, 30 L.Ed.2d 488 (1971); *Bell v. United States,* 349 U.S. 81, 83, 75 S.Ct. 620, 622, 99 L.Ed. 905 (1955); *United States v. Universal C.I.T. Credit Corp.,* 344 U.S. 218, 221-222, 73 S.Ct. 227, 229-230, 97 L.Ed. 260 (1952). Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability. See *United States v. Bass, supra,* 404 U.S., at 348, 92 S.Ct., at 523 "[B]ecause of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity").
>
> *Liparota,* 471 U.S. at 425-426.

In this case, the combination of 31 U.S.C. §§ 5324, 5322 adds a "willful" requirement to § 5324. It is a paramount principle of penal law statutory construction that the actual words of the statute must control, *see United States v. Locke,* 471 U.S. 84, 95-96 (1985)].

b. As To The 31 U.S.C. §§ 5324, 5322 Regulatory Scheme

As previously noted, the actual statutory *must* control. As the Court firmly declared in Locke:

> . . . the fact that Congress might have acted with greater clarity or foresight does not give courts a *carte blanche* to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do. "There is a basic difference between filling a gap left by Congress silence and rewriting rules that Congress has affirmatively and specifically enacted." *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625, 98 S.Ct. 2010, 2015, 56 L.Ed.2d 581 (1978).***On the contrary, deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill, generally requires us to assume that "the legislative purpose is expressed by the ordinary meaning of the words used." *Richards v. United States*, 369 U.S. 1, 9, 82 S.Ct. 585, 591, 7 L.Ed.2d 492 (1962).
>
> *United States v. Locke*, 471 U.S. at 1793 (1985).

In our case, the anti-structuring statutory scheme was actually passed as follows:

> § 5324. *Structuring transactions to evade reporting requirement prohibited*
>
> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction –
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);
>
> * * *
>
> (2) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.
>
> **31 U.S. § 5324**
>
> § 5322. *Criminal Penalties*
>
> (a) A person *willfully* violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more

than $250,000, or imprisoned not more than five years, or both.

(b) A person *willfully* violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315), while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both. [Emphasis supplied]

31 U.S.C. § 5322

From the ordinary meaning of the two statutes we cannot but conclude that the "willful" element required by 31 U.S.C. § 5322 must refer to the statute actually "violated" because that is what its clear and unambiguous language states. If Congress had wished to do otherwise it could have amended 31 U.S.C. § 5313 itself to specify various means of violating its requirement of CTR, such as structuring by individuals, etc. We must remember that the general setting of the enactment was the situation where certain circuits had refused to apply § 5313 in individuals as against institutions holding that individuals though not institutions could legally avoid filing CTR's through depositing less than $10,000 under § 5313. Compare *U.S. v. Varbel*, 780 F.2d 758 (9th Cir. 1986); *United States v. Denemark*, 779 F.2d 1559 (11th Cir. 1986); *United States v. Anzalone*, 766 F.2d 676 (1st Cir. 1985) with *U.S. v. Thompson*, 603 F.2d 1200 (5th Cir. 1979) and *United States v. Tobon-Bules*, 706 F.2d 1092 (11th Cir. 1983). It was in this climate that the Government sought and Congress passed § 5324 which refers specifically to individual structuring deposits, etc., see *Varbel, supra; Denemark, supra; Anzalone, supra*. Therefore the statute "violated" and to which the

"willful" *mens rea* requirement of § 5322 must apply necessarily be § 5324 which applies to individuals structuring their deposits. The Government below and elsewhere insists that in spite of the way the new law was placed in relation to other statutes, and in spite of its unambiguous language, the law actually violated is § 5313. Such a construction cannot withstand scrutiny under the very language passed by Congress. The Government below sought to retreat from the statutory language by referring to legislative history; however, as this Court has said many times, if the statutory language is clear, it is not necessary to examine the legislative history, *T.V.A. v. Hill*, 437 U.S. 153, 184 N. 29 (1978).

c. As To Other Similar Regulations

In interpreting similar regulatory statutes, Courts have consistently required knowledge of the law or regulation violated. In a similar prosecution involving the International Transportation of Currency Regulatory Scheme, 31 U.S.C. 1101, 1158, the Fifth Circuit itself held:

"An acknowledged awareness of 'U.S. Currency Laws' is too vague and unspecific to satisfy the *Granda* standards," *United States v. Schnaiderman*, 568 F.2d at 1211-1212 (5th Cir. 1978). Also, as pointed out in *Granda:*

> The second reason this case requires reversal is that we feel as a matter of law that it is impossible to prove beyond a reasonable doubt that the defendant acted with knowledge of the reporting requirements. The failure of the government to make known the requirements of the statute is fatal to their case. The isolated act of bringing money in excess of $5,000 into the country is not illegal or even immoral. What is required is merely a filing of the proper form. Proof of the requisite knowledge and willfulness, therefore, is almost impossible unless affirmative

steps are taken by the government to make the laws requirements known.

* * *

It is interesting to consider how easily the government could avoid a recurrence of this problem. The simplest solution would be to add a sentence on the Customs Declaration Form to the effect that if you are carrying greater than $5,000 you are required by law to fill out certain forms. Such a sentence would place all travelers on notice. Alternatively, customs officers upon finding sums in excess of $5,000 could advise travelers such is not illegal but the law does require completion of an additional form (4790) and then provide appropriate documents. This procedure would also place a traveler on notice. Unfortunately, nothing in the methods currently employed by the government places a traveler on notice of the reporting requirements, and, as a result, it is impossible to prove that a traveler *knowingly* and *willfully* violated the law. Consequently, the judgment of the district court must be reversed, and that court is directed to enter a judgment of acquital. *U.S. v. Granda*, 565 F.2d 922, 926 (1978)

And in *Frade:*

In such circumstances, criminal willfulness requires more than the ordinary legal assumption that the person charged know what he is doing and act deliberately. A finding of specific intent is essential. *United States v. Davis*, 583 F.2d at 193; *United States v. Schnaiderman*, 568 F.2d 1208, 1211 (5th Cir. 1978); *United States v. Granda*, 565 F.2d 922, 926 (5th Cir. 1978).

* * *

"The failure of the government to make known the requirements of the statute is fatal to [its] case- . . . Proof of the requisite knowledge and willfulness . . . is almost impossible unless affirmative steps are taken by the government to make the laws' requirements known." *United States v. Granda*, 565 F.2d at 926. See *United States v. Warren; United States v. Schnaiderman; United States v. Granda* (violation of

> reporting provisions of Bank Secrecy Act); and *United States v. Hernandez; United States v. Davis* (failure to obtain a license for munitions exports). As the former fifth circuit stated in *United States v. Granda*, 565 F.2d at 926, "Since the purpose of the law, and the criminal law in particular, is to conform conduct to the norms expressed in that law, no useful end is served by prosecuting the 'violators' when they have no knowledge of the law's provisions." The requirement of notice is grounded in the Constitution. *Lambert v. California*, 355 U.S. 225, 228-230, 78 S.Ct. 240, 242-44, 2 L.Ed.2d 228(1957). ("Engrained in our concept of due process is the requirement of notice . . . Where person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process").
>
> *U.S. v. Frade*, 709 F.2d 1387, 1392 (11th Cir. 1983)

And in *Chen:*

> . . . The failure of the government to make known the requirements of the statute is fatal to their case. The isolated act of bringing in excess of $5,000 into the country is not illegal or even immoral. What is required is merely a filing of the proper form. Proof of requisite knowledge and willfulness, therefore, is almost impossible unless affirmative steps are taken by the government to make the laws' requirements known.
>
> *U.S. v. Chen*, 605 F.2d 433, 435 (9th Cir. 1979)

We also must note that the *Chen* court placed intentional currency transportation into the category of innocent activity and thus gives a basis for holding that a series of bank deposits below $10,000 as being in a like category. *Chen*, 605 F.2d at 433. The courts have acknowledged that the "willfulness," specific intent, and knowledge of the law requirements not only fit international currency transportation regulation, but banking regulations as well, *United States v. Eisenstein*, 731 F.2d 1540 (11th Cir. 1984). This is because depositors (even those depositing

less than $10,000.00) are engaged, like international travelers, in an innocent if not beneficial activity. Looking at the examples provided by the Government to the Fifth Circuit *Government Brief*, at pp. 20, N. 3, 24, and comparing them to those cited by the Appellant, we see that these are different cases. The financial regulation and technical regulation cases all require that the accused have knowledge of the specific regulation charged. Actually, the Government has admitted that knowledge of the law *is required* for 31 U.S.C. § 5324 prosecutions, but the Government only refers to knowledge of 31 U.S.C. § 5313 instead of knowledge of the law upon which the indictment and conviction was based, *Government Brief*, at pp. 25-26. As previously noted, the "willfullness" requirement in 31 U.S.C. § 5322 which attaches to the statute upon which the charge is based, not collateral statutes, requires specific intent and knowledge of the law as to this same statute, see §§ 5322, 5324, *Indictment, Schnaiderman, supra, Granda, supra.* See also *United States v. Granda*, 565 F.2d 922 (5th Cir. 1978); *United States v. Warren*, 612 F.2d 887 (5th Cir. 1980); *United States v. Salinas-Garza*, 803 F.2d 838 (5th Cir. 1986); *United States v. Schnaiderman*, 568 F.2d 1208 (5th Cir. 1978). See also *United States v. San Juan*, 545 F.2d 314, 319 (2d Cir. 1976); *United States v. Chen*, 605 F.2d 433 (9th Cir. 1979); *United States v. Fitzgibbon*, 619 F.2d 874 (10th Cir. 1980); *United States v. Hernando Ospina*, 798 F.2d 1570 (11th Cir. 1986); *United States v. Dichne*, 612 F.2d 632 (2d Cir. 1979); *United States v. Davis*, 583 F.2d 190 (5th Cir. 1981).

2. The *mens rea* requirement of §§ 5324, 5322 require a jury instruction embodying a defendant's contention that she was unaware of the anti-structuring law.

The Fifth Circuit itself had settled this issue as it applied to international border reporting requirements in *Granda* by holding:

> . . . In a case such as this, the proper instruction would include some discussion of the defendant's ignorance of the law since the defendant's alleged ignorance of the [law violated] goes to the heart of his or her denial of the specific intent necessary to commit the crime. See *United States v. Schilleci*, 545 F.2d 519, 524 (5th Cir. 1977). Failure of the defendant to have the benefit of this instruction was plain error. *U. S. v. Granda*, 565 F.2d 922 at p. 926

Also, in *United States v. Hernandez*, 662 F.2d 289 (5th Cir. 1981) the Fifth Circuit declared:

> *United States v. Davis*, 583 F.2d 190 (5th Cir. 1978) requires that Hernandez' conviction on counts 2 and 3 be reversed. *Davis*, like the present case, involved a conviction for willfully exporting weapons on the Munitions List. We approved in *Davis* the Ninth Circuit's holding in *United States v. Lizarraga*, 541 F.2d 826 (9th Cir. 1976), that the statutes' requirement of willfulness connoted a voluntary, intentional violation of a known legal duty. We also agreed with the Ninth Circuit that particularly where the weapons covered by the statute are spelled out in administrative regulations, specific intent is required. David acknowledged that our decisions concerning specific intent instructions were not one hundred percent consistent. We held nevertheless that the trial court must instruct the jury on the effect and relevance of a defendant's ignorance of the law. 583 F.2d at 194. This is required both in instances where the trial court had instructed that the defendant was presumed to know the law, *United States v. Schilleci*, 545 F.2d 519 (5th Cir. 1977), and in instances where no instruction at all had been given. *United States v.*

> *Granda*, 565 F.2d 922 (5th Cir. 1978). Here, despite arguments and objections by defense counsel, the trial court failed to discuss Hernandez' claims of ignorance, as they pertained to counts 2 and 3. While it is true that Hernandez' concealment of the weapons possibly supported a jury finding that he knew his conduct was unlawful, cf. *Etheridge v. United States*, 380 F.2d 804 (5th Cir. 1967), such a finding falls short of deciding that he knew he was unlawfully exporting weapons on the Munitions List. In any event, David and the cases if cites, teach that the court should put squarely before the jury the relevance of ignorance of the law. Obviously, reversal of conviction on count 3 is mandated. Davis also requires reversal of count 2 because the indictment under that count incorporates willful exportation.
>
> *U.S. v. Hernandez*, 662 F.2d at 291-292.

3. Failure to prove a required mental state should result in acquittal.

Here, the Government wholly failed to prove the fact that the Petitioner acted with knowledge of the anti-structuring law, § 5324. Similar cases have required not only reversals, but judgments of acquittal:

> . . . Unfortunately, nothing in the methods currently employed by the government places a traveler on notice of the reporting requirements, and, as a result, it is impossible to prove that a traveler knowingly and willfully violated the law. Consequently, the judgment of the district court must be reversed, and that court is directed to enter a judgment of acquittal.
>
> *U.S. v. Granda*, 565 F.2d at p. 927
>
> Since the full Court now adopts Granda and Schnaiderman, the currency violation convictions of John and Thomas Warren are reversed, and the District Court is directed to enter a judgment of acquittal as to those convictions.
>
> *U.S. v. Warren*, 612 F.2d at p. 891

> . . . For the reasons discussed below, we reverse the conviction on both counts and remand with instructions to enter a judgment of acquittal.
>
> *U.S. v. Schnaiderman*, 568 F.2d at p. 1210

> . . . The evidence that defendant knew of the reporting requirement is speculative. See *United States v. Schnaiderman, supra*, where the court found that: "An acknowledged awareness of 'U.S. currency laws' is too vague and unspecific to satisfy the *Granda* standards." 568 F.2d at 1212.
>
> Accordingly, the conviction is reversed, and the case remanded for entry of a judgment of acquittal.
>
> *U.S. v. Chen*, 605 F.2d at p. 436

4. The burden of notice and proving knowledge of the law will not be fatal to law enforcement.

In prosecuting 31 U.S.C. §§ 1101, 1058 cases involving international transportation of currency, the Government quickly solved the notice and *mens rea* problems. The Second Circuit noted the efforts of the Government to provide notice of the law before finding that the evidence was sufficient to prove this element:

> During the time Dichne, Marinsky and Hauser were observed in the departure area, United States Customs Inspector Conrad Millan read an announcement concerning the United States monetary reporting requirements over the public address system on four separate occasions. In addition, a number of large color posters explaining the reporting requirements were prominently displayed throughout the departure area.
>
> *U.S. v. Dichne*, 612 F.2d 632, 635-636 (2d Cir. 1979).

Similarly in regard to the 31 U.S.C. §§ 5324, 5322 regulations, the Secretary of the Treasury has proposed almost identical measures:

> In order to prosecute a person (or to assess a civil penalty against a person) for structuring to evade the

currency reporting requirement or causing a financial institution not to file a Currency Transaction Report, the Government must be able to establish that the person had knowledge of the reporting requirement and specific intent to commit the crime. In addition, some defendants recently have asserted, although Treasury does not agree, that in order to sustain a prosecution of section 5324, the government must be able to establish not only that the person knew that the financial institution at which he is structuring transactions had a reporting obligation, but that the person had knowledge that structuring transactions to avoid reporting by the financial institution was prohibited by law. This problem of establishing knowledge is presenting difficulties for investigators and prosecutors and is threatening to undermine Treasury's ability to assure compliance with section 5324.

Therefore, in order to assure compliance with Section 5324, Treasury is considering requiring financial institutions subject to the Bank Secrecy Act to establish procedures to notify customers of the provisions to Section 5324, especially customers conducting currency transactions. If prosecutions cannot be brought successfully under Section 5324, Treasury clearly will be unable to assure compliance with this provision.

Treasury is issuing this Advanced Notice of Proposed Rulemaking to solicit the views of the affected financial institutions, law enforcement agencies and other interested parties on how best to formulate procedures for communicating the provisions of section 5324 to customers at the least expense and with the least operational burden to the financial institutions.

* * *

1. Require that a short notice prescribed by Treasury of the provisions of Section 5324 be posted conspiciously at every location where customers may

conduct cash transactions, e.g., bank teller's windows, casino gaming tables and cages.

2. Require that a short Treasury form notice of the provisions of section 5324 be handed to any person conducting currency transactions over a specified amount, e.g., $1000 or $3000. Currency transactions would include deposits to accounts and purchases of monetary instruments such as cashier's checks, official bank checks, money orders or traveler's checks.

3. Require that all deposit tickets be imprinted with a short notice prescribed by Treasury of the provisions of section 5324 and that person making a currency deposit over a certain amount, i.e., $1000 or $3000, sign the back of the deposit slip in acknowledgment of reading such notice.

4. Require that a short Treasury form notice of the provisions of section 5324 be sent to all customers by a certain date and to all new customers upon the opening of an account. This requirement would apply to customers with "transactional accounts" as defined in 31 CFR 103.11(n).

5. Require that a short Treasury form notice of the provisions of section 5324 be included periodically, e.g., quarterly, in all customers' monthly statements of accounts, and upon opening a new account. This requirement would apply to statements of "transactional accounts," as defined in 31 CFR 103.11(n).

In the event that financial institutions receive inquiries from customers as the result of any of the above proposals, Treasury could make available a form to give to customers giving a more detailed explanation of the provisions of section 5324 and a toll free Treasury number for the customer to call for further information.

***Federal Register*, Vol 53, No. 48 (Friday, March 1, 1988) Proposed Rules.**

Thus, even aside from the fact that the Government has other means to combat the laundering of illegal

money, we see that simple steps could and should be implemented to avoid ensnared, unwarned citizens.

CONCLUSION AND PRAYER

WHEREFORE, the above premises considered, Petitioner prays that this Court grant a Petition for Certiorari to the United States Supreme Court and thereafter reverse the judgment and sentence entered below, and enter a judgment of acquittal, or in the alternative, to remand this cause for a new trial.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-1314

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIA DOLORES CAMARENA,

Defendant-Appellant.

Appeal from the United States District Court for the Western District of Texas
(EP-87-CR-133)

(December 6, 1966)

Before REAVEY, HIGGINBOTHAM, and SMITH, Circuit Judges.

PER CURIAM:*

I

A federal grand jury indicted Maria Dolores Camarena on 58 counts of unlawfully structuring currency transactions with domestic financial institutions for the purpose of evading the currency reporting requirements

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the bases of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

set forth in 31 U.S.C. § 5313(a) and 31 C.F.R. § 103.22(a). The indictment charged that Camarena's conduct was part of a pattern of illegal activity involving $545,900 in a 12-month period, in violation of 31 U.S.C. §§ 5324(1) and (3) and 5322(b). Camarena was convicted on all 58 counts following a jury trial, and sentenced to a prison term and fine.

On appeal, Camarena does not contest the government's claim that she deposited the charged amounts of cash in the banks on the dates set forth in the indictment. Indeed, the facts are largely undisputed. Camarena's argument to us boils down to four main points: (1) that knowledge of the illegality of "structuring" is an essential element of the offense; (2) that the statutory scheme is void for vagueness; (3) that the jury was improperly instructed regarding pattern, and (4) that the government engaged in improper jury argument.

II

Camarena's principle argument on appeal is that knowledge of the illegality of "structuring" is an essential element of the offense set forth in 31 U.S.C. §§ 5324 and 5322. At trial, Camarena argued that she was not guilty because she did not know that structuring was illegal. The government contends that, along with the other statutory elements, it only had to prove that Camarena structured currency transactions with knowledge of the reporting requirements and the specific intent to avoid them. The government denies that it had to prove that Camarena knew that structuring transactions to avoid triggering the filing requirements was itself illegal. In

other words, the government argues that Camarena's ignorance of the prohibition against structuring is no defense if she knew about the filing requirements and intentionally acted to evade them.

The statute at issue here, 31U.S.C. § 5324, was passed as part of The Comprehensive Anti-Drug Abuse Act of 1986, Public Law 99-570, 100 Stat. 3207 (October 27, 1986), and is part of Title I of subtitle H of such Act, entitled the "Money Laundering Control Act of 1986." Section 5324 prohibits, *inter alia*, the "structuring" of currency transactions with domestic financial institutions for the purpose of evading the reporting requirements under 31 U.S.C. § 5313(a).[1] Section 5324 provides:

> § 5324. Structuring transactions to evade reporting requirement prohibited.
>
> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction –
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);
>
> (2) cause or attempt to cause a domestic financial institution to file a report required under section 5313() that contains a material omission or misstatement of fact; or
>
> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

---

[1] The reporting requirements are set forth at 31 C.F.R. § 103.11 *et seq*. Those regulations require domestic financial institutions, such as banks, to file a CTR each time they engage in a transaction involving currency in excess of $10,000.

Criminal violations of Section 5324 are prosecuted under 31 U.S.C. § 5322, which imposes criminal sanctions for "willful" violations of this statute.[2] Section 5322 provides:

§ 5322 Criminal Penalties

(a) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except under section 5315) shall not be fined more than $250,000, or imprisonment not more than five years, or both.

(b) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315), while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

The plain language of the statute under which Camarena was charged prohibits evading reporting requirements by three means. Camarena was convicted for evading the requirements by the third means: structuring transactions. She was not charged and convicted of structuring a transaction as a distinct offense. Rather, the complete charge was structuring for the purpose of evading the reporting requirements of section 5313(a).

---

[2] The Fifth Circuit Pattern Jury Instruction, number 9.1, explains that "[t]he word 'willfully' . . . means that the act was committed *voluntarily and purposely* with the specific intent to do something the law forbids; that is, with bad purpose to disobey or disregard the law." (emphasis added).

Our reading of the statutory scheme is aided by the case law developed before passage of Section 5324 in prosecutions for aiding and abetting violations of the reporting obligation. In these cases, the government sought to prosecute individuals who structured transactions on grounds that they were accessories to the bank's failure to report the transactions. Section 5324 was largely a codification of the cases affirming the aiding and abetting theory and rejecting contrary decisions. *See* U.S. Code Cong. & Admin. News 5393 (1986) (citing cases). *Compare United States v. Thompson*, 603 F.2d 1200 (5th Cir. 1979); *United States v. Tobon-Bules*, 706 F.2d 1092 (11th Cir. 1983) (affirming aiding and abetting theory) *with United States v. Anzalone*, 766 F.2d 676 (1st Cir. 1985) (rejecting aiding and abetting theory); *United States v. Denemark*, 779 F.2d 1559 (11th Cir. 1986) (same); *United States v. Varbel*, 780 F.2d 758 (9th Cir. 1986) (same). The statutory scheme and this history leave little doubt that Congress intended to create an offense of "structuring to evade reporting," and that the offense required proof of specific intent to evade by intentionally structuring. In sum, Congress imposed a legal duty upon the customer – no structuring to avoid filing – thereby taking care of an omission that the First, Ninth and Eleventh Circuits had found fatal to the theory that defendants who structured could be convicted of aiding and abetting a financial institution's failure to report deposits. Camarena had no legal duty to report; rather, her duty was to *not defeat* reporting. By definition, Camarena's deposits did not trigger a reporting obligation on the part of the bank or Camarena.

It follows from this account of the legislative history that the government is correct in its contention that the required specific intent is proved by evidence that Camarena knew of the bank's legal obligation to report transactions in excess of $10,000 and acted with the bad prupose of defeating that law rather than for some innocent purpose. Of course, Camarena was entitled to a jury instruction that the government must prove that she acted with a bad purpose: that she knew of the reporting requirement and acted with the purpose of defeating it.

Camarena's requested jury instruction, however, would have required the government to prove that she knew of the anti-structuring law. The district court did not err by refusing this request. Knowledge of the specific law or prohibition is not required. The government need only prove that Camarena was aware that her conduct was wrong. The trial court gave just that instruction. It told the jury:

> An act is done willfully if done voluntarily and intentionally, and with specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.
>
> To evade or attempt to evade the reporting requirements of Title 31, United States Code, Section 5313 (a), means the Defendant acted voluntarily and intentionally and with the specific intent to knowingly keep from the bank sufficient information to prepare and file with the United States Treasury Department the currency transaction report.
>
> *In other words, the evasion or attempted evasion must be made with the bad purpose of seeking to prevent the bank from making a written report of the currency transaction.*

> The word knowingly means that the act or omission was done voluntarily and intentionally, and not because of a mistake or accident. (emphasis supplied).

There was no error.

Camarena next argues that the structuring prohibition of section 5324 (3) is unconstitutionally vague. We are not persuaded. "The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement . . . the more important aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the doctrine – the requirement that a legislature establish minimal guidelines to govern law enforcement." *Kolender v. Larson,* 461 U.S. 352, 357-58 (1983) (*quoting Smith v. Goguen,* 415 U.S. 566, 574 (1974). We are not persuaded that the prohibition against willfully structuring transactions to avoid a known legal rule to report is vague. The words are plain and limited by the required proof of intent we have described. There is no untoward risk of arbitrary enforcement; no citizen need guess at the lawfulness of his conduct at pain of criminal punishment. The statutory scheme is not unconstitutionally vague.

We summarily reject Camarena's contentions that there was insufficient evidence to sustain her conviction. This argument is largely a restatement of her contention that ignorance of the specific prohibition against structuring was a defense, and we have rejected that argument. To the extent it claims more, the argument is frivolous.

Finally, we reject Camarena's contention that she was deprived of a fair trial by two trial occurrences. First, she suggests that the court erred in instructing the jury that "a series of currency reporting violations may constitute a pattern of illegal activity as that term is used in this law. The government is not required to prove the existence of some independent illegal activity." Camarena objected to this instruction, which was not requested by the government. Apparently, the trial judge thought that the instruction might prevent the jury from becoming confused over whether proof of illegal activity other than structuring was required. We are not completely sure about the trial court's purpose because no explanation is in the record. We are not fully persuaded that the instruction was necessary. However, the potential for confusion is certainly a plausible explanation. In any event, Camarena has articulated no prejudice and we have found none. If error, it is no basis for overturning the conviction.

Second, Camarena urges that the prosecutor's closing argument was prejudicial. The prosecutor referred, over objection, to Camarena as a "money-launderer" and used the term on other occasions, such as during his opening statement when he referred to the case as a "money-laundering case." The argument was improper. It implied that the structuring was to cover some other illegal activity and there was no relevant evidence that such was the case. Congress undoubtedly intended to attack just such underlying conduct when it passed the acts at issue here. However, underlying bad acts were not in evidence and the prosecutor was not allowed to substitute innuendo for evidence. The trial court sustained objections when they were made to the remarks and gave a curative

instruction. We are persuaded that the error did not deprive Camarena of a fair trial.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-1314

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIA DOLORES CAMARENA,

Defendant-Appellant.

Appeals from the United States District Court for the Western District of Texas

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ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC
(Filed Jan. 19, 1989)

(Opinion 12/06/88, 5 Cir., 198 , ___ F.2d ___)

Before REAVLEY, HIGGINBOTHAM and SMITH, Circuit Judges

PER CUIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing en Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are

in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ P. S. Higginbotham
United States Circuit Judge

Clerk's Note:
See FRAP and Local Rules 41 for Stay of the Mandate.
REHG-6

Supreme Court, U.S.
FILED
MAY 17 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1567

In the Supreme Court of the United States

OCTOBER TERM, 1988

DOLORES MARIA CAMARENA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether knowledge of the statutory prohibition against structuring financial transactions with domestic financial institutions for the purpose of evading the reporting requirements of 31 U.S.C. 5313(a) is an essential element of the offense under 31 U.S.C. 5322 and 5324(3) (1982 & Supp. V 1987).

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In the Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1567

DOLORES MARIA CAMARENA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-9) is unpublished, but the decision is noted at 863 F.2d 880 (Table).

JURISDICTION

The judgment of the court of appeals was entered on December 6, 1988. A petition for rehearing was denied on January 19, 1989 (Pet. App. 10-11). The petition for a writ of certiorari was filed on March 20, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Texas, petitioner was convicted on 58 counts of unlawfully structuring currency transac-

tions with domestic financial institutions for the purpose of evading the reporting requirements of 31 U.S.C. 5313(a), in violation of 31 U.S.C. 5322 and 5324(3) (1982 & Supp. V 1987). She was sentenced to concurrent terms of five years' imprisonment on all counts, with all but six months of the sentence suspended, to be followed by five years' unsupervised probation. Petitioner was also fined $250,000. The court of appeals affirmed (Pet. App. 1-9).

1. The evidence at trial is summarized in the government's brief filed in the court of appeals. It showed that on November 14, 1986, petitioner opened a money market account at MBank Vista Hills in El Paso, Texas, where she had also opened a personal checking account the month before. On two occasions, petitioner attempted to deposit cash totaling in excess of $10,000 by depositing part of the cash into her money market account and part into her checking account. When she was informed by a bank employee on each occasion that the bank would file a Currency Transaction Report (CTR) because the combined deposits exceeded $10,000, petitioner withdrew the deposit to her checking account and made a deposit of less than $10,000 to her money market account alone.[1] Between February 18 and April 24, 1987, petitioner made 29 deposits, all in cash, to the money market account. The individual deposits ranged in amounts from $7000 to $9900; the total amount deposited during that period in the MBank accounts was $274,350. Gov't C.A. Br. 7-9.

On February 18, 1987, petitioner and her mother opened a second money market account, this time at Texas Commerce Bank in El Paso. While opening the account,

---

[1] Under 31 U.S.C. 5313(a) and 31 C.F.R. 103.22(a), a financial institution is required to file a CTR whenever a customer engages in a currency transaction in excess of $10,000.

petitioner asked a bank employee if she were correct in believing that the bank did not have to file a CTR with the government when a customer deposited less than $10,000. The bank employee responded that petitioner was correct. As with her MBank account, petitioner made 29 cash deposits to the Texas Commerce Bank account between February 18 and April 24, 1987. The individual deposits ranged in amount from $7000 to $9900; the total amount deposited in that period to the Texas Commerce Bank accounts was $271,550. Gov't C.A. Br. 10-13.

2. Petitioner testified in her own defense at trial. She admitted that she knew about the banks' obligation to file CTRs for transactions in excess of $10,000. She also admitted that she intentionally deposited amounts less than $10,000 in her accounts in order to avoid having the banks file CTRs for her transactions. Petitioner's defense was that she did not know, and was never informed by bank personnel, that 31 U.S.C. 5324 (Supp. V 1987) prohibited her from structuring her transactions to evade the banks' currency transaction reporting requirements. See Pet. 7.

To support her defense, petitioner asked the district court to instruct the jury that the government was required to prove as an element of the offense that she had acted with knowledge of the prohibition against structuring under Section 5324 and with the specific intent to evade that law. Gov't C.A. Br. Add. D3. The district court refused that instruction. Instead, the district court charged the jury that the government was only required to prove that petitioner had "acted willfully, that is, that she acted with knowledge of the currency reporting requirements and with the specific intent to evade those requirements." The court explained that "[t]o evade or attempt to evade the reporting requirements * * * means the [petitioner] acted voluntarily and intentionally and with the specific intent to knowingly keep from the bank sufficient infor-

mation to prepare and file * * * the currency transaction report." "In other words," the court pointed out, "the evasion or attempted evasion must be made with the bad purpose of seeking to prevent the bank from making a written report of the currency transactions." Gov't C.A. Br. Add. C1-C2.

3. The court of appeals affirmed in an unpublished opinion (Pet. App. 1-9). The court rejected (*id.* at 2-7) petitioner's contention that the government was required to prove as an essential element of the offense that she knew of the specific prohibition against structuring in Section 5324(3). Based on the text and legislative history of that section, the court concluded that "the required specific intent is proved by evidence that [petitioner] knew of the bank's legal obligation to report transactions in excess of $10,000 and acted with the bad purpose of defeating the law rather than for some innocent purpose" (Pet. App. 6). The court explained that petitioner was accordingly entitled only "to a jury instruction that the government must prove that she acted with a bad purpose: that she knew of the reporting requirement and acted with the purpose of defeating it" (*ibid.*).[2]

ARGUMENT

Petitioner renews her contention (Pet. 10-30) that knowledge of the specific prohibition against structuring in 31 U.S.C. 5324(3) (Supp. V 1987) is an essential element of the offense under that section. The court of appeals correctly rejected that contention.

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[2] The court of appeals also rejected the contention that Section 5324 is unconstitutionally vague (Pet. App. 7), as well as petitioner's challenge to the sufficiency of the evidence, to a second jury instruction, and to the prosecutor's closing argument (*id.* at 7-9). The petition does not present those issues.

Section 5324 was enacted as part of the Money Laundering Control Act of 1986, which was included as Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, §§ 1351-1367, 100 Stat. 3207-18 to 3207-39. Section 1354 of the Act, 100 Stat. 3207-22, entitled "Structuring Transactions to Evade Reporting Requirements Prohibited," created the new Section 5324, which provides, in pertinent part, as follows:

> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction –
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);
>
> (2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or
>
> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

The penalties for violations of Section 5324 are set forth in 31 U.S.C. 5322 (1982 & Supp. V 1987), which provides in pertinent part:

> (a) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than $250,000, or imprison[ed] not more than five years, or both.
>
> (b) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed

> under section 5315), while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

By its plain language, the statute prohibits the willful evasion of the reporting requirements of Section 5313(a) by any of several means, including by structuring transactions. Thus, the only specific intent required is the intent to evade the reporting requirements. The statute does not require the government to prove that a defendant knew that the particular means she chose for violating the statute was expressly prohibited.

This Court's decision in *Liparota* v. *United States*, 471 U.S. 419 (1985), on which petitioner relies (Pet. 16-18), does not require a different result. The question presented in *Liparota* was what mental state, if any, the government was required to prove in a prosecution for unlawful acquisition or possession of food stamps under 7 U.S.C. 2024(b)(1) (471 U.S. at 423). The Court held that the government was required to prove that the defendant knew that he had acquired or possessed the food stamps in a manner that was not authorized by the statute or regulations (*id.* at 433). The Court made clear, however, that the government need not prove that the defendant knew of the specific regulations governing food stamp acquisition or possession (*id.* at 434).

In the present case, the court of appeals did not dispense with proof of mens rea as an element of the offense under Section 5324(3). To the contrary, the court held that the government was required to prove (1) that petitioner knew she was evading the reporting requirements and (2) that she deliberately structured her transactions for the purpose of evading those requirements (Pet. App. 6). Con-

sistent with *Liparota*, the court of appeals merely concluded that it was not necessary to show that petitioner also knew of the specific anti-structuring provision in Section 5324(3).

Moreover, as the court of appeals explained (Pet. App. 5), the legislative history of Section 5324 confirms that the government need only prove a specific intent to evade the reporting requirements. The Senate Committee on the Judiciary, reporting favorably on the identical provision in S. 2683, 99th Cong., 2d Sess. (1986), an earlier version of the money laundering bill, addressed the very activity with which petitioner was charged, and made clear that only a specific intent to evade the reporting requirements must be proved (S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986) (emphasis added)):

> [T]he proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act. For example, a person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days *with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions*, would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single transaction (for example, splitting $2,000 in currency into four transactions of $500 each), would not be subject to liability under the proposed amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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